FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2360 OF 2005

Office notes, office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.Sanjay Kshirsagar for the Petitioner.

Mr.Rajesh More, APP. for the State.

Mr.P.P. Killedar for the Respondent No.1.

CORAM : R.S. MOHITE,J.
DATED : 3/4/2006.

P.C.

1. Heard both sides.

2. Rule. By consent, rule made returnable forthwith.

3. This petition impugns an order dated 18.6.2005 passed by the 11th Joint Civil Judge, J.D. and J.M.F.C. Pune rejecting application at Exh.22 in Criminal Case No.2109/2001. The said case pertains to offence under Section 138 of the Negotiable Instruments Act. Exh.22 was preferred by the complainant for leading secondary evidence as the

original cheque had been misplaced by his advocate. The application was supported by an affidavit of the complainant in the trial court. The application has been rejected on the ground that the complainant had not exhausted all resources and means in search of the document in question and no affidavit of the advocate that he lost the cheque is annexed to the application. Similarly, no police complaint was lodged regarding the loss of the original cheque. The present petitioner has now annexed the affidavit of the advocate who has categorically stated that he has lost the cheque in the court premises. In my view, there is sufficient material to indicate that the cheque was lost. If, in fact, the cheque was not lost there was no need for the petitioner to lead secondary evidence. In the circumstances, in my view, petition deserves to be allowed. Rule is made absolute in terms of prayer clause (a). Petition stands disposed off.

(R. S. MOHITE, J.)